

may rightfully direct any defence against it which goes to shew, that neither he himself, nor any one of his co-defendants, ought to be charged by it; and if he succeeds in establishing such a defence, the plaintiff's bill must be totally dismissed.

Hence it is obvious, that this class of cases, in which the Court may find it necessary or proper, because of their peculiar circumstances, to pass a separate, a reciprocal, a direct, or an inverted decree, do in reality present nothing which can fairly or in any way be considered as an exception to this general rule.

But where two or more persons have been bound by the contract upon which the suit has been brought, and one of them pleads the Statute of Limitations in bar, it has been said, that an acknowledgment made, within the limited time, of its then existing validity by such defendant, or by any other of his co-defendants, will take the case out of the statute. The adjudications in relation to this matter are various and contradictory. Therefore, without attempting to reconcile them, it will be sufficient to trace out the reason of the law so far as it is believed to be properly applicable to this and all such cases in equity.

To constitute a valid contract of any description, it is indispensably necessary that the parties should be competent to contract; and being so competent, that they should all of them, in the manner prescribed by law, understandingly have given their free consent to the contract in question. In general, when the contract purports to be the obligation or promise of two or more persons, it must be shewn, that each one of them distinctly gave his consent to it, and thereby actually and in terms for himself became so \* bound. But where there exists a partnership in trade, each partner may make certain contracts in the name of the whole which shall be obligatory alike upon all the partners. Now, in all such cases, any one of the contractors may satisfy the entire demand of the contract; and upon its terms being wholly complied with by any one of them, it is thereby totally extinguished and ceases to be any longer obligatory upon any one of them in favor of him to whom it was given. That a contract may be wholly satisfied by any one of the contractors, and when so satisfied is thereby totally extinguished as to all, is a principle of law so obviously rational and just, that it need only to be stated to be universally admitted. 277

Consequently it is equally manifest, that any renewal of a contract, which has been thus satisfied, barred or extinguished, can only be effected by the exercise of a similar capacity to contract to that which had been called forth for its original formation. Suppose then, the alleged cause of suit to be an agreement whereby all the defendants had bound themselves to pay to the plaintiff a certain sum of money. In support of such a cause of suit it is necessary to prove, that each one of the defendants, by his ex-